

Remarks

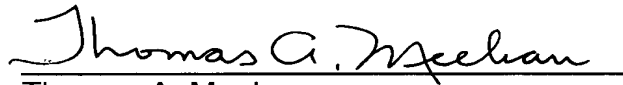
Restriction was required under 35 U.S.C. 121 as between claims 1 – 5, as Group I, and claims 6 – 14, as Group II, and Applicant has provisionally elected to continue prosecution of this application based on the Group II claims, claims 6 – 14. However, Applicant hereby traverses the requirement for restriction in this matter for the reason that the inventions of Group I and Group II are not “independent” of one another, as required both by 35 U.S.C. 121 (“If two or more independent and distinct inventions are claimed in one application ...”), and 37 C.F.R. §1.142(a) (“[t]wo or more independent and distinct inventions can not be claimed in one national application ...”), (emphasis added).

In that regard, the tests to be applied to determine whether two or more inventions are “independent” are set forth in MPEP §806(A), which reads “[n]o disclosed relation therebetween”) and (C), which reads “[w]here inventions are related as disclosed but are not distinct as claimed, restriction is never proper” (emphasis added). In stating the requirement for restriction, the Examiner failed even to attempt to make the case that the inventions, as defined in the requirement for restriction, are “independent” of one another under this test; of course, this test, it is respectfully submitted, cannot be met because the identified inventions clearly are “related as disclosed”.

It is also submitted that the Group I claims are not "distinct" from the Group II claims, under 37 CFR §1.142(a), because the inventions of such claims are classified in the same class/subclass, namely class 65, subclass 126. See also MPEP §808.02(A), (B) regarding the required showings to be made to support a "distinctness" contention.

Accordingly, reconsideration and withdrawal of the requirement for restriction under 35 U.S.C. §121 are respectfully requested.

Respectfully submitted,


Thomas A. Meehan
Reg. No. 19,713

Emch, Schaffer, Schaub &
Porcello Co., L.P.A.
One SeaGate, Suite 1980
P.O. Box 916
Toledo, OH 43697-0916
(419) 243-1294
TAM/kah